



House Judiciary Committee  
HB 4092  
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DNA is an effective tool for fighting crime when used correctly. But as with all forms of law enforcement intrusions, the collection of DNA must be balanced against the rights and freedoms of law-abiding citizens. Any effort to expand DNA collection must include an equal effort to protect the public from unnecessary infringements upon their rights, and the security of such information when it is obtained.

U.S. Courts have generally ruled that DNA banking of convicted felons is permissible either because a “special need” is present where persons have been convicted of crimes with high recidivism rates or because convicted felons have a “diminished expectation of privacy.”

Neither of these circumstances applies to those persons who have simply been arrested.

Expanding DNA samples to arrestees is problematic because the constitutional presumption of innocence requires us to treat all arrestees as innocent until proven guilty. HB 4092 will result in the state collecting and maintaining DNA samples and profiles of individuals who are innocent. This bill would make them suspects merely based on the fact that they were arrested for an enumerated crime. There is no initial judicial oversight to determine whether an arrest is even valid before the DNA sample can be taken. When there is probable cause to believe that an individual has committed a certain crime, and there is DNA evidence for which the individual’s DNA can be compared, the state is free to obtain a warrant for that individual’s DNA. But when an individual is arrested for a crime in which there is no DNA evidence involved, it is unreasonable to take a biological sample from them.

Courts have held that taking a biological sample is a search and seizure for purposes of the Fourth Amendment. The question of its constitutionality turns on whether it is reasonable. In the context of people who have been convicted, courts have found that it is reasonable; however, the rights of arrestees are different from the rights of those who have already been convicted.

Thousands of people are arrested or detained every year and never charged with a crime. Allowing DNA samples from such persons to be uploaded to the state criminal DNA database fundamentally alters the meaning and purpose of the database from one of crime deterrence to population surveillance.

We cannot overlook the fact that we are talking about taking a DNA sample. Unlike fingerprints - two-dimensional representations of the physical attributes of our fingertips that can only be used for identification – DNA samples can provide insights into personal family relationships, disease predisposition, physical attributes, and ancestry. Repeated claims that human behaviors such as aggression, substance addiction, criminal tendency, and sexual orientation can be explained by genetics render law enforcement databases especially prone to abuse.

We may claim the DNA sample is being used, at the moment, as a tool for identification in criminal cases. We do not know, however, where the rapidly expanding state of our knowledge of genetics will lead us, nor can we know what uses law enforcement may have for DNA in the future.

Data collection in the United States has grown exceedingly intrusive; yet the safeguards to protect such private information have lagged dismally behind. The increase in personal information and identity theft crimes demands that improved safeguards are in order to protect such personal and private information. Without such protections, such information will remain prone to falling into the hands of those that would use this information for their own private or professional gain, placing innocent people at risk. If such extensive damage can be done through identity theft accomplished by obtaining someone's Social Security number, the bounds of damage that could be done with DNA are endless. If we are going to require people to divulge such information, the least we can do is guarantee its safety and protection.

This legislation does not adequately address the rights of innocent individuals to have their DNA profile and sample returned to them. If we are not interested in keeping samples of innocent people, then we need to do better. At a bare minimum, samples and profiles taken from innocent people must be returned to them automatically.

I hope we can work on some meaningful amendments to preserve the rights and freedoms of law-abiding Michigan citizens and appropriately protect the privacy and security of the DNA samples proposed in HB 4092.